



November 19, 2015

Honorable Stacy Ruble
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), and consistent with Order No. 1865 granting the Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, the Postal Service is providing a copy of an EMS Pay-for-Performance Partners' Agreement form between the Postal Service and a foreign postal operator. The Postal Service has marked the non-public version of the document as "Confidential" and "Non-Public" because the document contains information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the document to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the document contains the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of the document under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the document becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony Alverno".

Anthony Alverno
Chief Counsel
Global Business & Service Development

Enclosures

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed EMS Pay-for-Performance Partners' Agreement form ("Agreement").. The Postal Service is transmitting the Agreement to the Postal Regulatory Commission ("Commission") in accordance with 39 U.S.C. § 407(d) and consistent with Order No. 1865 granting the Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, filed on September 19, 2013. The unredacted Agreement is being filed under seal, while a redacted copy is included as an enclosure to this transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the

¹ The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish

portions of material filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and grant its application for its non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

The Postal Service believes that the postal operator that is the signatory to the Agreement is the only third party with a proprietary interest in the material.

Due to the sensitivity in providing the identification of the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.² The

Postal Service identifies as an appropriate contact person Stephanie Myles, Acting Manager, International Postal Relations, United States Postal Service.

Ms. Myles's phone number is (202) 268-6415, and her email address is

Stephanie.M.Myles@usps.gov.

a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

² The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting this document concerning EMS service with a foreign postal operator that is an agency of a foreign government. The document transmitted consists of an Agreement that defines the terms on which the Postal Service and the relevant operator exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-Performance Plan, including rate information. The Postal Service maintains that the redacted portions of the document should remain confidential.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to undermine the Postal Service's position in negotiations, as well as the position of the foreign postal operator that is the signatory to the Agreement. Competitors could also use the identity of the relevant foreign postal operator to target that country for business to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Foreign postal operators could use the rate and discount information to undermine the Postal Service's position in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the Postal Service in an effort to lower the rates charged for delivery of EMS in the United States, or raise the rates charged for U.S. origin shipments.

Harm: Foreign postal operators could use the rate and discount information to undermine the position of the foreign postal in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the foreign postal operator in an effort to lower or raise the rates charged for delivery of EMS in the those countries.

Alternatively, competitors use the pricing information to develop competing products.

Harm: Competitors could use the knowledge that the Postal Service has entered into arrangements for discounted EMS rates with certain foreign postal operators to the Postal Service's detriment when negotiating business arrangements with shippers in those countries.

Hypothetical: The identity of the countries with which the Postal Service has entered into arrangements for discounted EMS rates is released to the Public.

Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing

functions. The expedited delivery service determines that those countries provide a strategic market for increased competition, and then advertises itself to those countries' postal operators as offering better rates and performance thresholds than the Postal Service.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for products related to inbound EMS and Outbound Express Mail International, or similar products, should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

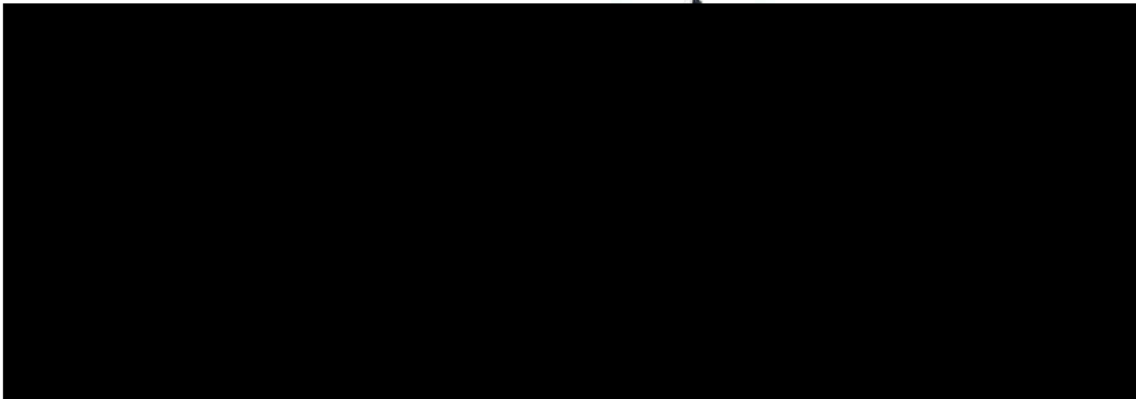
None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

Formulario de Acuerdo entre socios de remuneración en función de los resultados

Operadores EMS que celebran el contrato:



Socio 1

Quién suscribe como representante de

..... (Operador EMS), acuerda por el presente que su organización participará en el Plan de remuneración en función de los resultados EMS de conformidad con las condiciones establecidas anteriormente.

Fecha: 15/10/2015

Socio 2

Quién suscribe, como representante de (Operador EMS), acuerda por el presente que su organización participará en el Plan de remuneración en función de los resultados EMS de conformidad con las condiciones establecidas anteriormente.

Fecha: 16/10/2015

Firma:

Lea Emerson

Sírvase devolverlo a la Unidad EMS:

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EMS Unit
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